

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CAMI JO TICE-HAROUFF, §
Plaintiffs, §
v. § Case No. 6:22-cv-201-JDK
CAROLE JOHNSON, et al., §
Defendants. §

STIPULATION AND FINAL ORDER AND SETTLEMENT OF CLAIMS

Plaintiff Cami Jo Tice-Harouff commenced this action on May 25, 2022. Plaintiff's Verified Complaint alleges that Defendants violated the Administrative Procedure Act, 5 U.S.C. § 706, by removing language requiring coverage of fertility awareness-based methods of family planning ("FABM") from the 2021 updates to the Women's Preventive Services Guidelines ("2021 Guidelines").¹ Plaintiff seeks a temporary restraining order, preliminary injunction, and permanent injunction against Defendants to enjoin the effectiveness of the removal of the FABM coverage language. On May 27, 2022, Plaintiff moved for a temporary restraining order and preliminary injunction. Docket No. 4. On August 12, 2022, the Court granted Plaintiff's motion and entered a preliminary injunction. Docket No. 29.

¹ The 2021 Guidelines subject to this Final Order are available at: <https://www.hrsa.gov/womens-guidelines> (see also Ex. A to the Verified Complaint, Docket No. 1-1); "Update to the Women's Preventive Services Guidelines," 87 Fed. Reg. 1,763 (Jan. 12, 2022); and "January 21, 2022 Ratification of Preventive Services Guidelines and Recommendations by Secretary of Health and Human Services Xavier Becerra" (Jan. 21, 2022), available at Docket No. 65 at App002 & App026-035 in *Kelley v. Becerra*, Case No. 4:20-cv-00283-O (N.D. Tex. Jan. 28, 2022).

Plaintiff and Defendants hereby stipulate to and request the entry of a Final Order and Settlement of Claims to resolve all matters in dispute in this action except Plaintiffs' request for attorneys' fees and costs.

FINDINGS OF FACT

Based on all of the parties' submissions in this case, the Court's preliminary injunction decision, and the stipulation of the parties, the Court finds as follows:

1. Plaintiff Cami Jo Tice-Harouff brought this action pursuant to the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and 5 U.S.C. § 705 & 706. The Verified Complaint, including both of Plaintiff's claims, seeks injunctive relief and an order holding unlawful and setting aside the action of removing the FABM coverage language, consistent with the relief provided below.
2. This Court has jurisdiction over the subject matter of this action and has jurisdiction over Defendants. Venue in the Eastern District of Texas is proper.
3. Defendants neither admit nor deny any of the allegations in the Verified Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction. Defendants' position is that the deletion of the sentence discussing FABM in the 2021 Guidelines did not and does not remove coverage for FABM.
4. Plaintiff contends that the deletion of the sentence and the process surrounding that action violated the APA for the reasons discussed in her Verified Complaint and in the Court's preliminary injunction decision.
5. Plaintiff does not waive any claim that she may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other law providing for costs and expenses,

including attorneys' fees, concerning the prosecution of this action to the date of this Order or as needed to seek a costs and fees award. Defendants do not waive their right to oppose such claims. The parties agree to an extension of time for Plaintiff to file a petition under the EAJA to January 20, 2023.

ORDER

IT IS ORDERED that the Defendants' December 2021 deletion of the following sentence from the 2021 Guidelines is vacated. Accordingly, this sentence remains at the conclusion of the "Contraception" section of those guidelines:

Additionally, instruction in fertility awareness-based methods, including the lactation amenorrhea method, although less effective, should be provided for women desiring an alternative method.

IT IS FURTHER ORDERED that Plaintiff's deadline for filing a motion for costs and expenses, including attorneys' fees, under the Equal Access to Justice Act, is January 20, 2023.

So **ORDERED** and **SIGNED** this **6th** day of **December, 2022**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE